

Hon. Brian D. Lynch
Chapter: 11
Location: Tacoma, Washington
Hearing Date: September 14, 2012
Hearing Time: 9:30 a.m.
Response Date: September 12, 2012, by 12:00 p.m.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re: GALP Sierra Vista Limited Partnership, Debtor.	NO. 12-46182 EMERGENCY MOTION FOR USE OF CASH COLLATERAL AND NOTICE OF HEARING ON MOTION
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NOTICE

PLEASE TAKE NOTICE that the Emergency Motion for Use of Cash Collateral (the “**Motion**”) IS SET FOR HEARING as follows:

JUDGE:	Brian D. Lynch	TIME: 9:30 a.m.
PLACE:	1717 Pacific Avenue Courtroom H Tacoma, WA 98402	DATE: September 14, 2012

IF YOU OPPOSE the Motion, you must file your written response with the court clerk at 1717 Pacific Avenue, Suite 2100, Tacoma, WA 98402, and deliver copies to the undersigned NOT LATER THAN THE RESPONSE DATE, which is **by 12:00 p.m. on Wednesday, September 12, 2012.**

IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its discretion, GRANT THE APPLICATION WITHOUT FURTHER NOTICE, and strike the hearing.

EMERGENCY MOTION FOR USE OF CASH
COLLATERAL AND NOTICE OF HEARING ON
MOTION - 1

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1 **MOTION**

2 **RELIEF REQUESTED**

3 Ira K. Glasser (the “**Receiver**”), the state court appointed general receiver over assets
4 assigned to him by GALP Sierra Limited Partnership (the “**Debtor**”), the debtor in this Chapter
5 11 case, requests an order authorizing the Debtor’s use of cash collateral and granting
6 replacement liens. The Receiver proposes for the Debtor to use the cash collateral for the
7 primary purpose of maintaining and operating the Debtor’s primary asset—an apartment
8 building—while this case is pending. This Court has jurisdiction to consider this matter pursuant
9 to 28 U.S.C. § 1334; venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this is a core
10 proceeding pursuant to 28 U.S.C. § 157(b). The Receiver makes this motion pursuant to 11
11 U.S.C. §§ 361(2) and 363(c)(2), FRBP 4001(b), and Local Rule 4001-3.

12 **STATEMENT OF FACTS**

13 On July 23, 2012, the Receiver was appointed under Washington law as general receiver
14 for the assets assigned to him by the Debtor pursuant to an assignment for the benefit of
15 creditors. Declaration of Ira K. Glasser (“**Glasser Decl.**”) ¶ 1. Following his appointment as
16 general receiver, the Receiver has been administering the receivership estate in accordance with
17 the court order appointing him as general receiver and Washington’s receivership statute
18 (Chapter 7.60 RCW). *Id.*

19 The Debtor is a single-asset real estate entity. It has no material assets other than an
20 apartment building known as the Sierra Vista Apartments, located at 5500 El Camino Del Rey in
21 Houston, Texas. Glasser Decl. ¶ 2. There are 401 units in the Sierra Vista Apartments. *Id.*
22 Tenants of the Sierra Vista Apartments pay an aggregate of approximately \$250,000 in rent per
23 month. *Id.* The Receiver, on behalf of the Debtor, caused a voluntary Chapter 11 petition to be
24 filed on September 4, 2012 (the “**Petition Date**”), shortly before a scheduled foreclosure sale of
25 the Sierra Vista Apartments. Glasser Decl. ¶ 6. Shortly before the Petition Date, the Receiver,
26

1 on behalf of the Debtor, had entered into a purchase and sale agreement pursuant to which the
2 Sierra Vista Apartments were to be sold for \$7,250,000.00. Glasser Decl. at ¶ 3.

3 The Debtor has three secured creditors with a security interest in the Sierra Vista
4 Apartments and the rents generated thereby: JRG Capital Investors I, LLC (“**JRG**”); KH
5 Holdings Inc.; and Fairway Capital, LLC (collectively, the “**Secured Creditors**”). Glasser Decl.
6 ¶ 7. Such creditors are owed approximately \$4,800,000.00, \$1,200,000.00, and \$3,900,000.00,
7 respectively. *Id.* The Debtor has little or no unencumbered cash, as it does not anticipate
8 receiving funds other than rents and related income subject to the Secured Creditors’ respective
9 security interests. *Id.* Accordingly, the Receiver requests that the Court enter an order
10 authorizing the Debtor to use rents and related income generated by the Sierra Vista Apartments
11 (collectively, “**Cash Collateral**”) to operate and maintain the Sierra Vista Apartments while this
12 case is pending. A proposed budget setting forth the Debtor’s proposed monthly uses of Cash
13 Collateral is attached as Exhibit B to the declaration of Ira K. Glasser submitted in support of this
14 motion (the “**Budget**”).

15 **STATEMENT OF ISSUE**

16 Whether the Court should authorize the Debtor to use Cash Collateral to continue
17 operating and maintaining the Sierra Vista Apartments during the pendency of this bankruptcy
18 case.

19 **EVIDENCE RELIED UPON**

20 This motion relies upon the entire record before the Court, including the declaration of
21 Ira K. Glasser, which is submitted contemporaneously with this motion.

22 **AUTHORITY**

23 Under 11 U.S.C. § 363(c)(2), a debtor in possession may use cash collateral without a
24 secured creditor’s consent if the court, after notice and hearing, authorizes such use. *In re*
25 *Sunnymead Shopping Ctr. Co.*, 178 B.R. 809, 814 (1995). The court’s authorization for the use
26 of cash collateral must adequately protect the creditor’s interest in that collateral. 11 U.S.C.
§ 363(e); *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 203-04 (1983).

1 Here, the Debtor submits that JRG's security interest in the Sierra Vista Apartments and
2 the rents generated thereby is adequately protected based on the approximately \$4,800,000.00
3 obligation owed to JRG and the fully executed purchase and sale agreement, which includes a
4 \$7,250,000.00 purchase price for the Sierra Vista Apartments. It is the Receiver's understanding
5 that the two other Secured Creditors, KH Holdings Inc. and Fairway Capital, LLC, consent to the
6 Debtor's proposed use of Cash Collateral in accordance with the Budget.

7 The Receiver submits that the relief requested herein is in the best interest of the estate
8 and the Secured Creditors. Specifically, the Receiver proposes that the Debtor will use the Cash
9 Collateral to pay expenses that are necessary to (a) generate revenue and (b) protect the value of
10 the Secured Creditors' other collateral—namely, the Sierra Vista Apartments. These expenses
11 include utilities, taxes, advertising expenses, and administrative expenses such as accounting and
12 professional fees, payroll taxes, and property management fees. The Debtor will also use the
13 Cash Collateral to pay for maintenance and repair of the building and apartment units. Without
14 access to the Cash Collateral, the Debtor cannot preserve the Sierra Vista Apartments, prepare
15 units for re-renting, or market units effectively as units become available, impairing its ability to
16 reorganize. *See* Glasser Decl. ¶ 8.

17 CONCLUSION

18 Access to the Cash Collateral is vital to the preservation of other collateral and to the
19 Debtor's prospects for reorganization. JRG is adequately protected by the current value of the
20 Property and the two other Secured Creditors, KH Holdings Inc. and Fairway Capital, LLC,
21 consent to the Debtor's proposed use of Cash Collateral. The Court should therefore authorize
22 the Debtor to use the Cash Collateral according to the Debtor's proposed budget.

1 DATED this 7th day of September, 2012.

2 CAIRNCROSS & HEMPELMANN, P.S.

3
4 /s/ John R. Rizzardi

5 John R. Rizzardi WSBA No. 9388

6 Andrew J. Liese WSBA No. 38313

7 Attorneys for General Receiver Ira K. Glasser
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